

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

United States Courts
Southern District of Texas
FILED

NOV 13 2019

David J. Bradley, Clerk of Court

United States of America

v.

Joshua Tannery

Case No.

H19-2133M

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of 09/25/19-10/24/2019 in the county of Harris in the
Southern District of Texas, the defendant(s) violated:

Code Section

Offense Description

18 U.S.C. § 2252A (a)(2)(B)

Receipt of Child Pornography

This criminal complaint is based on these facts:

See attached Affidavit.

☒ Continued on the attached sheet.



Complainant's signature

Robert J. Guerra, FBI Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date: November 13, 2019



Judge's signature

City and state: Houston, Texas

Dena Hanovice Palermo, USMJ

Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Robert J. Guerra, being duly sworn, hereby depose and state the following:

1. I am a Special Agent (SA) with the Federal Bureau of Investigation (FBI), assigned to the Special Agent in Charge (SAC), in Houston, Texas. I have been so employed since November 2005. As part of my daily duties as an FBI agent, I am assigned to the FBI Houston Child Exploitation Task Force which, among other things, investigates criminal violations relating to child exploitation and child pornography, including violations pertaining to the illegal production, distribution, receipt and possession of child pornography, in violation of 18 U.S.C. §§ 2251, 2252A and 2252A et seq. I have received training in the areas of child pornography and child exploitation. I have had the opportunity to observe and review numerous examples of child pornography in all forms of media including computer media. Child Pornography, as defined in 18 U.S.C. § 2256, is:

“any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where – (A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct; . . . [or] (C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.” For conduct occurring after April 30, 2003, the definition also includes “(B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from that of a minor engaging in sexually explicit conduct.”

2. This Affidavit is made in support of a criminal complaint charging Joshua TANNERY with violating 18 U.S.C. § 2252A(a)(2)(B), the receipt of child pornography within the Southern District of Texas.
3. Because this Affidavit is being submitted for the limited purpose of securing a criminal complaint, I have not included each and every fact known to me concerning this investigation, I have set forth only those facts that I believe are necessary to establish probable cause that evidence of violation of 18 U.S.C. § 2252A(a)(2)(B) occurred between the dates of on or about September 25, 2019, and October 24, 2019, and was committed by Joseph TANNERY. Throughout this Affidavit, statements made by sources

of information and other witnesses are set forth in substance and in pertinent part unless otherwise indicated. Further, the facts and circumstances of this investigation have been set forth in pertinent part for the purpose of this Affidavit and do not include the complete factual history of this investigation, or all of its details.

Factual Basis to Support Criminal Complaint

4. Beginning on September 25, 2019, SA Robert J. Guerra, FBI Houston Division, using a computer located in Houston, Texas, connected to the Internet, conducted an online session involving the IP address 73.166.195.254. During this session, SA Guerra utilized a law enforcement tool that allows single-source downloads from the BitTorrent P2P network.
5. During the undercover session which occurred between the dates of September 25, 2019, at 21:13:01 (GMT -05:00) and September 26, 2019, at 00:45:35 (GMT -05:00), SA Guerra conducted a single-source download from IP address 73.166.195.254. SA Guerra downloaded approximately 25 image files and 3 video files from IP address 73.166.195.254.
6. SA Guerra has reviewed the downloads obtained from IP address 73.166.195.254 and believes, based on his training and experience, that at least 20 image files and all 3 of the video files obtained from IP address 73.166.195.254, during the session specified above, depicts child pornography as defined in Title 18, United States Code, Section 2256. The file name and the description of 3 child pornography files downloaded from IP address 73.166.195.254 are given below:
 - a) **(Pthc) 8yo Blow Job – Serious Cum Shot – 1m42s.avi** – This is a video file that is 1 minute and 42 seconds in length, depicting a minor female, who appears to be under the age of 10, being orally penetrated by an adult male's penis.
 - b) **PTHC – 6yo~16yo Blowjob by Caligvla –(77).jpg** – This is an image file depicting a minor female, who appears to be under the age of 12, being orally penetrated by an adult male's penis.
 - c) **PTHC – 6yo~16yo Blowjob by Caligvla –(350).jpg** – This is an image file depicting a minor female, who appears to be under the age of 10, being orally penetrated by an adult

male's penis.

7. SA Guerra determined that the IP address 73.166.195.254 is registered to the Internet Service Provider (ISP) Comcast Communications. On September 30, 2019, Comcast Communications responded to an administrative subpoena and provided account information for IP address 73.166.195.254 assigned during the undercover session conducted by SA Guerra. The account information provided by Comcast Communications showed the subscriber having a service address of 3230 South Gessner Road, Apartment Number 2004, Houston, Texas.
8. On October 25, 2019, FBI Houston executed a federal search warrant at the aforementioned residence. During the execution of the warrant, law enforcement made contact with Joshua TANNERY, hereinafter referred to as "TANNERY." TANNERY was subsequently interviewed by SA Guerra and SA Ryan J. Shultz. After being advised of his *Miranda Rights*, which he acknowledged and stated he understood, TANNERY agreed to make a statement.
9. TANNERY advised the interviewing agents that he used his cellular telephone to download and view child pornography via the uTorrent program. TANNERY admitted to using the terms "pthc" or "ls models" to search for files depicting child pornography. TANNERY admitted that his downloading of child pornography was not an accident, it was something he purposely sought out. TANNERY stated he understood that files don't just download on their own, he had to select which files to download via the uTorrent program. TANNERY stated he had downloaded child pornography as recently as the week prior to the execution of the search warrant.
10. TANNERY stated he knew child pornography was illegal, but stated he had gotten tired of regular pornography. During the interview, TANNERY was shown several screen shots depicting several videos to include those described in paragraph 6. TANNERY stated he recognized the screenshots shown to him as files he had downloaded via uTorrent. TANNERY admitted to masturbating while viewing child pornography.
11. During the execution of the search warrant, SA Shultz previewed TANNERY's cellular device and observed approximately 15 thumbnails depicting child pornography within the uTorrent program. Several of the thumbnails depict minor females, who appear

to be under that age of 12, being orally penetrated by an adult male's penis. Based on my training and experience the files found on TANNERY's device meet the federal definition of child pornography as defined by Title 18, United States Code, Section 2256.

CONCLUSION

12. Based on all information set forth above, your Affiant believes there is probable cause to believe that between the dates of on or about September 25, 2019, and October 24, 2019, Joshua TANNERY, was in violation of Title 18 U.S.C. § 2252A(a)(2)(B) by receiving child pornography, via the BitTorrent network.



Robert J. Guerra
Special Agent, FBI

Subscribed and sworn before me this 13th day of November 2019, and I find probable cause.



Dena Hanovice Palermo
United States Magistrate Judge